IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 04 OF 2007.

Kadamba Transport Corporation
Ltd., a Company having their
Registered Office at Paraiso de Goa,
Porvorim, Goa, represented herein
by their Managing Director
Shri S.V. Naik. .... Appellant.

Versus

1. Mrs. Rosy Braganza,
   Wife of Ahpit Braganza,
   Major, r/o C-001,
   Opp. Hotel Vasco,
   Susheela Grande,
   Vasco-da-Gama, Goa.

2. Shri Dilip Naik,
   Vasco Kadamba Depot,
   Vasco-da-Gama, Goa. .... Respondents.

Mr.Ajit Kantak, Advocate for the Appellant.

Mr. M. Pereira, Advocate for the Respondent No. 1.

CORAM: S. A. BOBDE, J.

DATE: 22nd March, 2007.

ORAL JUDGMENT:

Admit.

Taken up for final disposal by consent.

2. This is an appeal against the Order of the Civil Judge Senior Division, Vasco-da-Gama, rejecting the appellant's contention that the respondent's suit is barred by Section 175 read with Section 165 of the Motor Vehicles Act, 1988. The appellant had therefore applied under Order VII, Rule 11(d) for rejection of the plaint. The respondent sued the Kadamba Transport Corporation for damages and other relief of

injury suffered by her while travelling in the appellant's bus. According to the respondent No.1, she suffered an injury, not because the bus met with an accident, but because she fell off the seat in the last row of the bus, whereupon the seat fell on her and injured her back. She has therefore sued the appellant for compensation in the Civil Court since, according to her it was not a claim triable by the Motor Accident Claim Tribunal constituted under Section 165 of the M.V. Act.

3. According to the appellant, the respondent's suit was not tenable and is barred by section 175 of the M.V. Act. The appellant's application under Order VII Rule 11(d) having been rejected by the trial Court, the appellant has preferred this appeal. Section 175 reads as follows :-

> " Bar on jurisdiction of Civil Courts. - Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court. "

4. From the above, it is clear that a Civil Court does not have jurisdiction to entertain a question relating to a claim for compensation which is liable to be adjudicated upon by a Claims Tribunal.

5. The next question is therefore whether the respondent's claim for compensation can be adjudicated upon by the Claims tribunal. This will have to be answered with reference to Section 165. The relevant part of Section 165(1) reads as follows :-

> " 165. Claims Tribunals. - (1) A State Government may, by notification int he Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising or both. "

6. On a plain reading of Section 165, the intention of Parliament is clear and that is, that claims for compensation in respect of accidents "arising out of the use of motor vehicles" are liable to be tried by a Claims Tribunal. The section does not limit the jurisdiction of the Claims Tribunal only to two cases where the motor vehicle itself meets with an accident, that is, collides against another vehicle or object. Parliament has conferred jurisdiction on the Claims Tribunal wherever an accident arising out of the use of a motor vehicle takes place and there is a claim for compensation made in respect of such an accident. The phrase "arising out of the use of motor vehicles" is of

wide import and will include the accident alleged in this case namely the event in which the respondent claims to have suffered an injury on account of a loose rear seat of the appellant's bus. This is clearly an accident which arose out of the use of a motor vehicle, namely the appellant's bus within the meaning of Section 165.

7. In this view, therefore, the Order of the trial Court rejecting the appellant's application under Order VII Rule 11(d) is not in accordance with law. It is liable to be set aside.

8. In the result, the appellant's application under Order VII Rule 11 is liable to be allowed and is hereby allowed. The respondent's plaint is hereby rejected.

S. A. BOBDE, J.

sl.